

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EVELYN MCKINLEY,	)	
	)	Civil Action No. 04-222E
Plaintiff,	)	
	)	Honorable Susan Paradise Baxter
v.	)	Chief Magistrate Judge
	)	
R. L. BROWNLEE, Acting	)	ELECTRONICALLY FILED
Secretary of the Army,	)	
	)	
Defendant.	)	

**DEFENDANT'S CONSENT MOTION TO EXTEND DISCOVERY  
BASED UPON NEWLY DISCOVERED EVIDENCE**

AND NOW, comes the Defendant, R. L. Brownlee, Acting Secretary of the Army, by and through his attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Paul D. Kovac, Assistant United States Attorney for said district, and respectfully submits the following Motion requesting a 30-day extension of all deadlines in this case based upon newly discovered documents from Plaintiff's workers compensation file. In support of this Motion, Defendant avers as follows:

1. Discovery in this case has been previously extended by the Court and is currently scheduled to end on November 30, 2005.
2. One of the claims in this case involves an allegation of discrimination pursuant to the Rehabilitation Act based upon Plaintiff's alleged back disability.

3. Plaintiff's workers compensation file was previously requested by both parties. However, the parties realized, while taking the deposition of a workers compensation nurse on November 17, 2005, that there was extensive documentation missing from the workers compensation file that was in the possession of both parties. After further research, undersigned counsel discovered almost 700 pages of additional documentation from the workers compensation file that includes numerous medical treatment notations and contacts with the employer that are directly relevant to Plaintiff's disability discrimination claim. The additional documents were printed and first made available to both parties on November 29, 2005.

4. Based upon this newly discovered documentation, the parties agreed to postpone the previously scheduled deposition of Dr. Gomez (Plaintiff's treating physician). This deposition was originally scheduled to commence on November 30, 2005. However, additional time is necessary to review the newly discovered documents from the workers compensation file and determine what, if any, impact these documents would have on the deposition of Dr. Gomez. Accordingly, the parties have rescheduled Dr. Gomez's deposition for December 15, 2005.

5. Additionally, based upon the newly discovered documents, the parties may need to reopen the deposition of the workers compensation nurse in order to further examine her upon the newly discovered documents which include various nurse reports.

6. Accordingly, the parties require an additional 30 days to examine the newly discovered documents from Plaintiff's workers compensation file and conduct any further depositions that may be needed based upon the information in these documents.

7. Defendant has consulted with Mr. Neal Sanders, Plaintiff's attorney, and he has indicated that an additional 30 days is necessary for both parties to complete discovery.

8. Therefore, the parties respectfully request that discovery be extended to December 30, 2005. The parties further request that summary judgment motions, if any, be filed no later than February 13, 2006; that any opposition to such motions be filed by March 13, 2006; and that any reply be filed by March 27, 2006. A proposed Order is attached.

Respectfully submitted,

MARY BETH BUCHANAN  
UNITED STATES ATTORNEY

s/Paul D. Kovac  
PAUL D. KOVAC  
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Dated: November 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "DEFENDANT'S  
CONSENT MOTION TO EXTEND DISCOVERY BASED UPON NEWLY DISCOVERED  
EVIDENCE" was electronically filed and served by facsimile and  
first-class mail, postage-prepaid, on this 29th day of November,  
2005, on the following:

Neal A. Sanders, Esquire  
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s/Paul D. Kovac  
PAUL D. KOVAC  
Assistant U.S. Attorney